



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 12, 1996

Mr. John J. Hightower
Olson & Olson
Three Allen Center
Suite 3485
333 Clay Street
Houston, Texas 77002

OR96-0030

Dear Mr. Hightower:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 37788.

The City of Iowa Colony (the "city") received an open records request for the following information:

- (1) Mailing list(s) used for a survey to citizens mailed by the City of Iowa Colony in November of this year.
- (2) All responses that have been returned as of the date of receipt of this request.
- (3) The completed report/investigation made by the Brazoria County Sheriff's Office.

You have enclosed representative samples of the requested information and contend that section 552.103 of the Government Code excepts the information from disclosure.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.103(a) excepts from disclosure information relating to litigation to which the city is or may be a party. The city has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the city must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have referenced pending litigation and demonstrated how the enclosed records relate to that litigation; therefore you may withhold the requested information.

We note that once all parties to litigation have had access to the information at issue, through discovery or otherwise, section 552.103(a) is no longer applicable. Open Records Decisions Nos. 551 (1990); 454 (1986). Further, once litigation has concluded, section 552.103(a) is no longer applicable. Open Records Decision No. 350 (1982). Of course, the city has discretion to release the information at issue.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and is not a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 37788

Enclosures: Submitted documents

cc: Mr. Gregory B. Cagle
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(w/o enclosures)